

# United States District Court

EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

FRANK and LEILA PATE

v.

STATE OF TEXAS, ET AL.

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Case No. 4:11cv502  
(Judge Schneider/Judge Mazzant)

## **MEMORANDUM ADOPTING REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On October 27, 2011, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations as to Defendants the State of Texas and Governor Rick Perry's Motion to Dismiss Pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(5), and in the alternative, Defendants' Motion to Quash Service (Dkt. #9). Having considered the relevant pleadings, the Magistrate Judge found that the motion to dismiss for lack of jurisdiction should be granted.

The Court, having made a *de novo* review of Plaintiffs' objections, is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and the objections are without merit. Therefore, the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of this Court.

It is, therefore, **ORDERED** that Defendants the State of Texas and Governor Rick Perry's Motion to Dismiss Pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(5), and in the alternative, Defendants' Motion to Quash Service (Dkt. #9) is **GRANTED** and the State of Texas

and Governor Rick Perry are DISMISSED. Plaintiffs' federal due process claims are dismissed with prejudice. With the dismissal of all of the federal claims, the Court declines to address Plaintiffs' state claims, and this case is DISMISSED with prejudice.

**It is SO ORDERED.**

**SIGNED this 17th day of November, 2011.**

A handwritten signature in black ink, reading "Michael H. Schneider", written over a horizontal line.

MICHAEL H. SCHNEIDER  
UNITED STATES DISTRICT JUDGE